



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      DRI, MNDC, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via conference call and was attended by the tenant and his two agents and the landlord.

The hearing had originally been scheduled for November 16, 2010, however on November 12, 2010 the tenant's agent submitted that the tenant had been hospitalized for 3 weeks and was not able to prepare his evidence package or attend the hearing on November 16, 2010.

As a result the hearing was adjourned to be reconvened on November 30, 2010. The tenant submitted evidence on November 18, 2010. During the hearing the landlord questioned as to whether I would accept the evidence as it was served after the date of the original hearing.

I accept and will consider the evidence based on the same submission of the tenant's agent indicating that he had been hospitalized for several weeks prior to the hearing and unable to prepare his evidence, prior to the original hearing.

### Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation resulting from an additional rent increase and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 42, 43, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenancy originally began on September 15, 2005 when the tenant and his partner moved into the rental unit in a month to month tenancy for the monthly rent amount of \$555.00 due on the 1<sup>st</sup> of each month, a security deposit of \$277.50 was paid on September 2, 2005.

During the tenancy the tenant's partner moved out of the rental unit and the landlord and remaining tenant entered into a new tenancy agreement for a month to month tenancy for the monthly rent of \$577.00 due on the 1<sup>st</sup> of each month. The landlord did not return the security deposit paid for prior to the start of the first tenancy but applied it to the new tenancy.

Later in this tenancy the tenant's partner moved back in to the rental unit and the parties entered into a new tenancy agreement for a month to month tenancy starting on June 1, 2008 for a monthly rent of \$695.00 due on the 1<sup>st</sup> of each month and again the landlord continued the security deposit from the original tenancy. This last tenancy ended by May 31, 2010.

The tenant asserts that this last tenancy agreement to add the tenant's partner on to the tenancy agreement constitutes only a rent increase that is not compliant with section 43 of the *Act* exceeds the allowable amount of rent increase as calculated in accordance with the regulations.

The landlord contends that this was not a rent increase but rather a new tenancy and therefore a new tenancy agreement was entered into with both the tenant and his partner and that the previous tenancy was just with the tenant only. As a result of this being a new tenancy, the landlord asserts that he is able to determine rent based on market values for new tenancies.

The tenant asserts that he felt bullied into having to sign the new agreement and was there forced to agreed to the new agreement or have to vacate. The tenant also contends that the agreement that he had did not have a rent amount or a signature by a representative of the landlord.

The landlord described his usual practice is to have his on-site manner complete the majority of the tenancy agreement, have the tenant sign it, then forward to his head office to have the landlord or his other licensed agent complete any blanks in the agreement and sign it.

The tenant contends that as a result of the tenant never receiving a copy of the new tenancy agreement, the new tenancy agreement is invalid. The tenant acknowledges that he did discuss these matters with the landlord and that he was aware that his rent was to be increased and that he continued to pay rent knowing it was \$695.00.

The tenant points out that in all of the tenancy agreements entered into with the tenant there is a clause that the landlord has failed to complete. That clause states: "Subject to Clause 13, Additional Occupants, the tenant agrees that for each additional occupant in the rental unit, not named in Clause 2 above, the rent will increase by \$\_\_\_\_\_ per month, effective from the date of occupancy. The acceptance by the landlord of any additional occupant does not change this Agreement or create a new tenancy."

### Analysis

Section 40 of the *Act* states that a “rent increase” does not include an increase in rent that is for one or more additional occupants, and is authorized under the tenancy agreement and in compliance with Section 13(2)(f)(iv) states the amount of rent payable for a specified period and if the rent varies with the number of occupants the amount by which it varies.

While the tenants did not specifically testify to this issue, I accept that by raising the issue that a rent increase based on the number of occupants was not part of any of the tenancy agreements the tenant is asserting that the rent amount in the new and final tenancy agreement constitutes a rent increase as described in Sections 41, 42 and 43 of the *Act*.

If the landlord were to increase the rent under the second tenancy agreement from \$577.00 to \$695.00 without the tenant's consent and without notification as is required under the *Act* but solely on the basis of adding a new occupant to the existing tenancy agreement, I would accept the tenant's assertion.

However, the landlord and tenants entered into a brand new tenancy agreement on June 19, 2008 which ended the second tenancy completely. While I agree with the tenant's concerns around how the agreement is signed off by the landlord, specifically by the tenants without all of the terms (rent) being defined is a bad practice, it is the tenants' responsibility to understand what they are signing prior to signing it.

While the tenant's agents did indicate the tenant had some developmental issues, they did not assert the tenant was unable to enter into agreements and in fact, did not indicate any problems with the tenant entering into the two other previous agreements.

I accept the tenant's testimony that he understood that he and his partner had agreed to rent in the amount of \$695.00. Despite the tenant's assertion that because he did not receive a copy of the completed new tenancy agreement that the agreement is not valid, I accept the parties entered into a new agreement on June 19, 2008.

Section 13 of the *Act* allows for the parties to agree to a potential increases in the amount of rent paid due to additional occupants prior to entering into a tenancy agreement, it is not a *requirement* of tenancy agreements.

When an existing tenancy agreement does not speak to how rent will be impacted when additional occupants move in there is nothing in the *Act* that prohibits the parties from entering into a new agreement when a new occupant enters into the tenancy.

As such, I find that the landlord did not impose a rent increase but rather created a new tenancy with two tenants as opposed to the previous agreement that included only one

tenant. Therefore the parties are free to negotiate the amount of rent, as well as any other terms in the tenancy agreement.

Conclusion

For the reasons noted above, I dismiss the tenant's application in its entirety.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 1, 2010.

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Dispute Resolution Officer